



This Recommended Order and Decision became the Order and Decision of the
Illinois Human Rights Commission on 10/06/04.

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:)	
)	
HEATHER L. PATTERSON,)	
)	
Complainant,)	
)	Charge No.: 2000CF0673
and)	EEOC No.: 21BA00041
)	ALS No.: 11442
POTTER'S PLACE,)	
)	
)	
Respondent.)	

RECOMMENDED ORDER AND DECISION

On January 2, 2001, the Illinois Department of Human Rights filed a complaint on behalf of Complainant, Heather L. Patterson. That complaint alleged that Respondent, Potter's Place, sexually harassed Complainant.

This matter comes on to be heard on Respondent's Motion to Dismiss. Despite being given leave to do so, Complainant has failed to file a response to that motion. The time for filing such a response has passed. The matter is now ready for decision.

FINDINGS OF FACT

The following facts were derived from the record file in this matter, including the affidavits submitted by Respondent in support of its motion.

1. Complainant, Heather L. Patterson, filed her charge of

discrimination with the Illinois Department of Human Rights (IDHR) on October 6, 1999.

2. The IDHR filed a complaint on behalf of Complainant on January 2, 2001, approximately 450 days after the filing of Complainant's charge.

3. Respondent has submitted affidavits to indicate that it did not agree to extend the IDHR's statutory time limit for filing a complaint on Complainant's behalf.

4. Despite being given notice of Respondent's motion to dismiss, neither Complainant nor the IDHR filed any affidavit or other documentation to contradict Respondent's supporting affidavits.

CONCLUSIONS OF LAW

1. The issue of subject matter jurisdiction can be raised at any time.

2. Subject matter jurisdiction cannot be waived by the parties.

3. Pursuant to 775 ILCS 5/7A-102(G), after a charge of discrimination has been filed, the Illinois Department of Human Rights (IDHR) has 365 days to issue and file a complaint or to dismiss the charge, unless the parties agree in writing to extend the IDHR's time to act.

4. The complaint in this matter was untimely filed.

5. The Human Rights Commission has no authority to consider the allegations in the complaint in this matter.

6. The complaint in this matter should be dismissed with prejudice.

DISCUSSION

Complainant, Heather L. Patterson, filed her charge of discrimination with the Illinois Department of Human Rights (IDHR) on October 6, 1999. On January 2, 2001, approximately 450 days after the filing of that charge, the IDHR filed a complaint on Complainant's behalf.

Section 5/7A-102(G) of the Human Rights Act (775 ILCS 5/7A-102(G)) establishes certain time deadlines for filing complaints before the Human Rights Commission. According to that section, after a charge of discrimination has been filed, the Illinois Department of Human Rights (IDHR) has 365 days to issue and file a complaint or to dismiss the charge, unless the parties agree in writing to extend the IDHR's time to act. After the expiration of that period, the complainant has 30 days to file her own complaint. 775 ILCS 5/7A-102(G)(2). Once the time for filing a complaint has expired, the IDHR must immediately cease its investigation and dismiss the underlying charge. 775 ILCS 5/7A-102(G)(3).

The Human Rights Commission was created by statute. As a result, its power is limited by that statute. ***Aero Services Int'l, Inc. v. Human Rights Commission***, 291 Ill. App. 3d 740, 684 N.E.2d 446 (4th Dist. 1997). Defects in subject matter jurisdiction cannot be waived, and the issue of such jurisdiction

can be raised at any time. ***Eschbaugh v. Industrial Commission***, 286 Ill. App. 3d 963, 677 N.E.2d 438 (5th Dist. 1996).

The IDHR filed its complaint on behalf of Complainant on January 2, 2001, approximately 450 days after the filing of Complainant's charge. That complaint would only be timely if the parties had agreed in writing to extend IDHR's time period. Respondent, though, has submitted affidavits to indicate that it did not agree to extend the IDHR's statutory time limit for filing a complaint on Complainant's behalf.

If, in fact, the parties agreed to an extension of time in writing, it would seem to be a simple matter to produce a copy of that written agreement. However, despite notice of Respondent's motion to dismiss, neither Complainant nor the IDHR filed any such agreement. There was no affidavit or other documentation submitted to contradict Respondent's affidavits. Therefore, Respondent's allegations stand unrebutted.

Accepting Respondent's unrebutted allegations as true, it is clear that the complaint in this matter was untimely. It was filed nearly three months after the appropriate time had expired. Thus, the Commission has no subject matter jurisdiction and Respondent's motion should be granted.

RECOMMENDATION

Based upon the foregoing, the complaint in this matter was untimely filed and the Human Rights Commission has no authority to consider it. Accordingly, it is recommended that the

complaint in this matter be dismissed in its entirety, with prejudice.

HUMAN RIGHTS COMMISSION

BY: _____
MICHAEL J. EVANS
ADMINISTRATIVE LAW JUDGE
ADMINISTRATIVE LAW SECTION

ENTERED: August 6, 2002